

those provisions, and the Court will set aside a judgment obtained by default where the requirements have not been complied with.

It was contended by Mr. Thillaimuthu that since section 109 of the Companies Ordinance provides that the annual return of a Company must state, *inter alia*, the registered office and since the defendants themselves by their annual return dated the 14th October, 1955, had stated their registered office as at 144, Beach Street, then that return being later in point of time than their notice of change of address dated the 1st February, 1955, must be taken to state their correct registered office as, in fact, at 144, Beach Street and not 146, Beach Street. That argument was, in my view, fallacious, having regard to section 93(2) of the Ordinance, which makes it incumbent upon a Company to give notice of change of address of the situation of the registered office within twenty-eight days of such change. The section, moreover, specifically provides:—

"The inclusion in the annual return by a Company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection".

Personally on the facts of this case I find it almost impossible to believe that the defendant Company did not well know of the service of the Writ of Summons at 144, Beach Street and I think it probable that they deliberately elected to take no action on the matter at that stage. Nevertheless, it is a fact that the Writ of Summons was not served upon the registered office of the Company. Mr. Ng Ek Teong has suggested that the correspondence shows, at most, that the defendant Company were merely making use of 144, Beach Street for purposes of correspondence and office work whilst retaining their registered office at 146, Beach Street. Upon the authorities I was of the opinion that since the Company had not been served with the Writ of Summons at its registered office the purported service was, therefore, bad and all proceedings thereafter were bad and the judgment obtained in default of appearance was accordingly a nullity.

On the question of costs I was wholly satisfied that the defendant Company by their general conduct and by the inaccuracy of their annual return for 1955 in which they stated their registered office as at 144, Beach Street had largely contributed to the mistake made.

I accordingly allowed the defendants, as applicants, the costs of the day as against the plaintiffs-respondents, but made no order as to the costs of all previous proceedings.

Order accordingly.

Solicitors: Braddell & Ramani; S. Thillaimuthu.

Re PETER WONG; Ex-parte MIRANDOLLE VOUTE & CO. LTD.

[O. C. J. (Whyatt C.J.) February 11, 1958]

[Singapore—In Bankruptcy No. 7 of 1957]

Bankruptcy—Annulment of an adjudication order—Sheriff's nulla bona return—Whether Court has power to enquire into its correctness—Bankruptcy Ordinance (Cap. 11), s. 104—Whether Court has discretion.

This was an application by the debtor for the annulment of an adjudication order made against him on the ground that the act of bankruptcy relied upon in those proceedings, namely, a return by the Sheriff that the debtor was not possessed of any property liable to seizure, was not a valid act of bankruptcy since the debtor was in fact possessed of such property at the date of the Sheriff's return.

The questions for the consideration of the Court were: (i) whether the Court, sitting in Bankruptcy, has power to enquire into the correctness of the Sheriff's *nulla bona* return; (ii) if the Sheriff's return is held to be incorrect, whether the Court must necessarily annul the adjudication or whether, the Court has a discretion in the matter.

Held: (1) the Court, sitting in Bankruptcy, has power to enquire into the correctness of the Sheriff's *nulla bona* return;

(2) the Sheriff's return was incorrect and that jurisdiction conferred by section 104 of the Ordinance is discretionary. In *re Yap E. Boon*⁽³⁾ distinguished;

(3) in this case, even if the Sheriff's return was incorrect, nevertheless if the petitioning creditor honestly believed on reasonable grounds (that is to say, on the faith of the Sheriff's return) that the debtor had no property liable to seizure, the adjudication was initially good.

Cases referred to:—

(1) *Gyfford v. Woodgate* 103 E.R. 1016.

(2) *In re Harry Dunn, ex-parte the Official Receiver v. Harry Dunn* (1949) 1 Ch. 640.

(3) *In re Yap E. Boon* (1933) M.L.J. 217.

BANKRUPTCY.

D. G. Alcock (N. A. Christopher with him) for the debtor.

M. Karthigesu for a creditor.

K. Hilborne for the assign of petitioning creditor.

A. W. Ghows for the Official Assignee.

Whyatt C.J.:—This is an application by a debtor named Peter Wong for the annulment of an adjudication order made against him on the 11th February 1957 on the ground that the act of bankruptcy relied upon in those proceedings, namely, a return by the Sheriff that the debtor was not possessed of any property liable to seizure, was not a valid act of bankruptcy since the debtor was, in fact, possessed of such property at the date of the Sheriff's return.

The first question to be considered is whether this Court, sitting in bankruptcy, has power to enquire into the correctness of the Sheriff's *nulla bona* return. On this point there are no English cases to guide the

Court since this particular provision of the Singapore bankruptcy law has no counterpart in English bankruptcy law but in my opinion, there can be no doubt, on principle, that the Court has such power. It has been said that in bankruptcy everything is open to enquiry and certainly it has long been established that a Court, sitting in bankruptcy, may go behind a judgment even where the judgment has been affirmed by the Court of Appeal. A Sheriff's return has not the same *gravitas*, if I may so term it, as a judgment since it is no more than *prima facie* evidence of the facts contained in it (see *Gyfford v. Woodgate*⁽¹⁾) and it follows, in my opinion, that if the principles of bankruptcy law enable a Court to go behind a judgment, *a fortiori* they enable it to go behind a Sheriff's return when the return is relied upon as an act of bankruptcy. I should perhaps mention that neither counsel for the judgment creditor nor counsel for the Official Assignee contended for a contrary view in these proceedings.

Assuming, therefore, that the Court has power to go behind the Sheriff's *nulla bona* return in this case, the next question is whether the evidence now placed before the Court in these proceedings establishes that the return was erroneous. At the hearing on the 11th February 1957 which resulted in an adjudication order being made against the debtor, it was clearly proved that the debtor himself had admitted the correctness of the Sheriff's return after the creditor's petition had been filed. It is true that he later filed an affidavit contradicting this admission and stating in somewhat vague and equivocal language that he was possessed of goods worth more than \$30,000 but the Court held that this did not displace the conclusion to be drawn from the Sheriff's return, and the subsequent admission of the debtor that it was a correct return. Since then nearly twelve months have elapsed and during this time further facts have come to light which point to a different conclusion. On the 7th August 1957 the debtor filed an affidavit, giving further particulars of cotton, rubber and other goods which he said were in his possession, and mentioned for the first time a car, an Austin A40, which he said he had bought in 1956 and still retained. The Official Assignee who by this date had taken charge of the debtor's affair pursuant to the adjudication order was naturally very interested in these further detailed disclosures and requested the debtor to identify the specific property to his representative. In due course this was done and on the 13th August 1957 the Official Assignee took the goods and the car into his possession. Counsel for the Official Assignee informed the Court that the Official Assignee still retains this property in his possession and that the

A car registration book confirms the debtor's story that it has been in his ownership since 1956.

In face of this proof from the Official Assignee himself as to the physical existence and the present disposition of the debtor's property, the conclusion appears to me to be inescapable that the debtor was at the material time possessed of property liable to seizure and therefore the Sheriff's *nulla bona* return was incorrect. It may be the debtor was trying to play a double game, seeking to stave off bankruptcy proceedings by asserting that he had no assets, and then, when bankruptcy proceedings become inevitable, disclosing his assets in piecemeal fashion in the hope that some, at least, would escape the Official Assignee's attention; but whatever the correct view of his conduct may be, the fact remains that he did eventually hand over to the Official Assignee certain goods and a car, and in these circumstances, the reasonable and proper inference in my opinion is that he was possessed of property liable to seizure at the date of the Sheriff's return.

Having reached the conclusion that the Sheriff's return was incorrect, the next question I have to consider is whether, as the debtor contends, the Court has a discretion in the matter. The answer to this question depends upon the construction of section 104 of the Bankruptcy Ordinance and the interpretation placed upon it and upon the corresponding English provisions by the Courts in the Colony and in England. The relevant provisions of section 104 read as follows:—

"Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, ..., the Court may annul the adjudication."

These words which are reproduced from section 29 of the English Bankruptcy Act 1914 have always been taken by the English authorities to mean that the Court has a discretion. According to *Williams on Bankruptcy* (16th Edition) at page 150: "The jurisdiction conferred by the section is discretionary." The same view was expressed by Lord Evershed in *In re Harry Dunn, ex-parte the Official Receiver v. Harry Dunn*⁽²⁾ where the learned Master of the Rolls said: "It is to be observed that the power of the Court under section 29 is discretionary, the Court may, on the application . . . by order annul the adjudication". If the matter rested there, it would be virtually unarguable that the Court had no discretion. Counsel for the debtor maintained, however, that there were certain *dicta* in *In re Yap E. Boon*⁽³⁾ which supported his contention that the power of the Court is not discretionary and therefore the Court must necessarily annul the adjudication in the present case. *In re Yap E. Boon*⁽³⁾, *supra*, was a case in which a petitioning creditor obtained an adjudication, relying on a debt

which was not in existence at the date of the act of bankruptcy, and as it is clear law that a petitioning creditor's debt must have accrued at the time of the act of bankruptcy, it followed that the adjudication in that case was bad in law and void *ab initio*. It is plain that where a Court is called upon to state whether in its opinion a debtor ought or ought not to have been adjudged bankrupt in circumstances such as existed in *In re Yap E. Boon*⁽³⁾, *supra*, the Court, being rightly informed of the law, can have only one opinion and consequently there is no exercise of discretion in giving an opinion. This, in effect, is the substance of Cobbett J.'s observations at the end of his judgment in *In re Yap E. Boon*⁽³⁾, *supra*, where he says: "This does not appear to me to give the Judge any discretion if in his opinion the debtor ought not to have been adjudicated. It merely enables him to annul the bankruptcy and if that is his opinion he really has no option. It is not therefore the exercise of a discretion that we are called upon to consider but whether his opinion is right".

In other words, where the adjudication is bad in law and therefore void *ab initio*, the question whether the Court should or should not exercise its discretion to annul the adjudication, logically does not arise since the adjudication is already, in law, a nullity. It is true that certain expressions in the judgment of Terrell J. are wide enough to cover adjudications which are not bad in law but as they were not necessary for the purpose of the decision in that case, they cannot be regarded as binding. In my opinion the decision in *In re Yap E. Boon*⁽³⁾ *supra*, can be reconciled with the view expressed by the learned editor of *Williams on Bankruptcy* and the Master of the Rolls in *In re Harry Dunn*⁽²⁾, *supra*, that the power of the Court to annul an adjudication under this section is discretionary if it is remembered that *In re Yap E. Boon*⁽³⁾, *supra*, the Court was dealing with an adjudication order which was bad in law and void *ab initio* and therefore not one which called for the exercise of any discretion by the Court when ordering it to be annulled.

Such being my view of the law, the next question to be considered is whether an adjudication order based upon a Sheriff's *nulla bona* return which subsequently turns out to be an incorrect return must be annulled because it is bad in law or whether it is a good adjudication *ab initio*, in which case the Court may, in the exercise of its discretion, decide not to annul it under section 104. It is clear from the case of *Gyfford v. Woodgate*⁽¹⁾, *supra*, that a Sheriff's return is *prima facie* evidence of the truth of the facts contained in it, "upon the ground" as Ellenborough C.J. said, "that faith is to be given to the official set of a public officer, like the Sheriff" and therefore, in my view this adjudication founded upon such a return

was initially a good adjudication. I would add that in my opinion the petitioning creditor's position in this case was not very different from that of the debtor in *In re Harry Dunn*⁽²⁾, *supra*, which was referred to by Denning L.J. (as he then was) at page 64 in the following terms: "Even if the debt was unenforceable, nevertheless if the debtor honestly believed on reasonable grounds 'that he was unable to pay his debts' the adjudication was good and should not be annulled *ab initio*". So also in this case, even if the Sheriff's return was incorrect, nevertheless if the petitioning creditor honestly believed on reasonable grounds, (that is to say, on the faith of the Sheriff's return), that the debtor had no property liable to seizure, the adjudication was initially good.

It follows, therefore, that the Court has a discretion as to whether it should annul the adjudication under section 104 of the Ordinance. On this point, there can, I think, be no doubt. A perusal of the affidavits and other documents in these bankruptcy proceedings clearly shows that the debtor has a long history of duplicity and equivocation. If he had taken steps to identify the specific goods to his creditors in February 1957 instead of waiting until August 1957 to identify them to the Official Assignee, or if he had so much as exhibited his car registration book to his affidavit in February instead of suppressing all knowledge of the existence of the car until six months later, these proceedings need never have started on their long and tortuous course. From the outset the conduct of the debtor has, to say the least, been conspicuous for its lack of candour, and in my opinion, there is no good reason why the Court should exercise its discretion in his favour and annul this bankruptcy. For these reasons, I am of the opinion that the application should be dismissed.

Application dismissed.

Solicitors: *de Souza & Christopher; Allen & Gledhill; Hilborne & Co.*

SHAW & SHAW LTD. v. LIM HOCK KIM

[A. C. J. (Whyatt C.J.) March 5, 1958]

[Singapore—District Court Appeal No. 24 of 1955]

Landlord and Tenant—Claim for possession—Building of a "temporary character" distinguished from that of "permanent character"—Matters to be considered—Evidence of qualified witnesses—Control of Rent Ordinance (Cap. 242), s. 15(1)(i).

In this case the appellants claimed for the recovery of possession of premises let by them to the respondent on a monthly tenancy which was determined by a Notice to quit. At the trial they contended that the premises consisted in whole or in part of buildings of a temporary character which they intended to demolish for the purpose of rebuilding on the site, the plans for which had been